Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers	)	GN Docket No. 94-33

To: The Commission

COMMENTS OF SEA, INC.

SEA, Inc. ("SEA"), by its undersigned counsel, hereby files its Comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding, released May 4, 1994 (Notice). In support whereof, SEA states as follows:

1. Having determined previously in the Second Report and Order in General Docket No. 93-252 that it would forbear from applying Sections 203, 204, 205, 211, 212 and 214 of the Communications Act pursuant to the Omnibus Budget Reconciliation Act of 1993, the Commission is now seeking in this proceeding to determine whether it should further forbear from applying certain other sections of Title II of the Communications Act to mobile radio services classified as "Commercial Mobile Radio Service" ("CMRS").

2. In a related proceeding the Commission has issued a Further Notice of Proposed Rule Making in GN Docket No. 93-252,

released May 20, 1994 (the "Further Notice") in which it requested comments from interested parties as to whether certain CMRS providers should be deemed to be "substantially similar" to other such providers for purposes of achieving the Congressional objective of comparable regulatory treatment of CMRS providers that are "substantially similar".

3. Based upon its interest as a manufacturer of narrowband (5 kHz) mobile radio equipment for the 220 MHz service and its status as the holder of licenses for the operation of various trunked five-channel 220 MHz systems, SEA filed comments on June 20, 1994, in response to the Further Notice in GN Docket No. 93-252 regarding the manner in which the Commission should view the new 220 MHz service for purposes of regulatory comparability.

4. SEA demonstrated in its June 20 Comments in response to the Further Notice that the 220 MHz service was not "substantially similar" to other types of CMRS for a variety of reasons, and that, therefore, the technical and operational rules under consideration in the Further Notice should not be applied to providers of 220 MHz service who may be classified as CMRS providers.

5. For the same reasons that are set forth in its Comments in response to the Further Notice (which SEA hereby incorporates by reference in their entirety),[1/] SEA respectfully submits

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1/ For the convenience of the Commission and its staff, a conformed copy of SEA's Comments in GN Docket No. 93-252, filed on June 20, 1994, is attached hereto.

that the Commission should forbear from applying the various Title II provisions under consideration in the instant proceeding to 220 MHz licensees who may be classified as CMRS providers.

Respectfully Submitted,

SEA, INC.

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Dated: June 27, 1994

Attachment: Copy of SEA's Comments in GN Docket No. 93-252, filed on June 20, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 3(n)	)	
and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of	)	
Mobile Services	)	

To: The Commission

COMMENTS OF SEA, INC.

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Dated: June 20, 1994

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SUMMARY

The focus of SEA's attention in this proceeding is on the new service that was recently created by the Commission for operation in the 220-222 MHz band. SEA's interest in the 220 MHz service is twofold: (1) as a manufacturer and supplier of narrowband radio equipment, and (2) as a licensee and service provider.

In its Comments, SEA makes two points. First, 220 MHz systems that might be classified as CMRS should not be regulated as though they were "substantially similar" to other CMRS offerings such as cellular service and wide-area SMR service. SEA's second point pertains to the Request for Declaratory Ruling and Request for Rule Waiver, dated February 1, 1994, filed by SunCom Mobile & Data, Inc. which the Commission incorporated into this docket and upon which the Commission invited comment. It is SEA's view that the SunCom Request should be denied.

The Commission must not lose sight of the reason why the 220 MHz service was created in the first place -- to provide a test bed for the deployment of narrowband (5kHz) equipment in the marketplace so as to, in turn, encourage the meaningful development of narrowband in other portions of the spectrum.

The Commission should find that there is no "substantial similarity" between the interconnected service which might be provided by a small number of 220 MHz operators and the cellular-type mobile telephone interconnect service provided by cellular and ESMR licensees. Commercial 220 MHz licensees offering interconnect capability will most likely do so only to enhance the convenience of the primary dispatch service for their customers, rather than offering it in competition with the full-duplex telephone interconnect services offered by the cellular and ESMR carriers. The Commission should acknowledge that the 220 MHz service will be primarily a dispatch-only service and that even those 220 MHz licensees who offer interconnect service (and who might be, therefore, classified as CMRS providers) will not be offering a service that is "substantially similar" to that of the large cellular and ESMR operators, and that, accordingly, they should not be burdened with "comparable" technical and operational regulatory requirements.

The combined effect of the SunCom request will be to create a single licensed network of 220 MHz stations with approximate capacity of 50 channels per market and which, according to SunCom, will operate in "77 or more of the top 100 urban areas."

The SunCom request, if granted, would totally revamp the spectrum allocation and licensing rules that are now in place, and disserve the public interest by stopping the recently-gained momentum in the 220 MHz service and further delaying the opportunity for early deployment of narrowband technology in the mobile radio market.

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To: The Commission

COMMENTS OF SEA, INC.

SEA, Inc. ("SEA"), by its undersigned counsel, hereby files its comments in response to the Commission's "Further Notice of Proposed Rulemaking" in the above-captioned proceeding, released May 20, 1994 ("Further Notice"). In support, SEA states as follows:

I. INTRODUCTION AND BACKGROUND

1. In this proceeding, the Commission is taking the necessary further steps resulting from its action in the Second Report and Order[1/] which established the basic framework for classification of mobile services as "Commercial Mobile Radio Service" (CMRS) and "Private Mobile Radio Service" (PMRS) in accordance with the mandate established by Congress in the Omnibus Budget Reconciliation Act of 1993.[2/] Having determined in the Second Report and Order that certain types of services

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1/ Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Rcd. 1411 (1994).

2/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993) ("Budget Act").

fall within the statutory definition of CMRS, the Commission is seeking in this proceeding[3/] to comply with the further Congressional directive of ensuring that private land mobile licensees that are reclassified as CMRS providers be subject to "technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services."[4/] To accomplish the Congressional objective of comparable regulatory treatment for CMRS services that are "substantially similar", the Commission has stated that it will base determinations of "substantial similarity" primarily on whether CMRS providers compete to meet similar customer demands for services.[5/]

2. The focus of SEA's attention in this proceeding is on the new service that was recently created by the Commission for operation in the 220-222 MHz band. SEA's interest in the 220 MHz service is twofold: (1) as a manufacturer and supplier of narrowband radio equipment, and (2) as a licensee and service provider.[6/]

3/ In a related proceeding, the Commission is considering forbearing from applying certain Title II regulations to smaller CMRS providers and others. Notice of Proposed Rulemaking in GN Docket No. 24-33, released May 4, 1984.

4/ Budget Act, Section 6002(d)(3).

5/ Further Notice at para. 5.

6/ SEA is the holder of several licenses for five-channel trunked local systems in the 220 MHz service, and has entered into arrangements with certain other licensees pursuant to management agreements that are typical in the mobile radio industry.

3. SEA has been developing, manufacturing, and marketing narrowband (5 kHz) VHF land mobile radio equipment longer than any other company in the world. The company has been developing narrowband equipment since 1982, and is now delivering production voice and data 220 MHz equipment to licensees. SEA is the only U.S. company that has developed a 220 MHz voice and data narrowband product line.[7/] SEA has participated in every regulatory action of the Commission since 1982 involving the implementation of narrowband (5 kHz) technology, and has provided continuous technical assistance to the Commission and its staff with respect to the capabilities of narrowband technology in the VHF mobile radio bands.

4. In this proceeding, SEA wishes to make two points. First, 220 MHz systems that might be classified as CMRS should not be regulated as though they were "substantially similar" to other CMRS offerings such as cellular service and wide-area SMR service. SEA's second point pertains to the Request for Declaratory Ruling and Request for Rule Waiver, dated February 1, 1994, filed by SunCom Mobile & Data, Inc. ("SunCom Petition"), which the Commission incorporated into this docket and upon which the Commission invited comment. It is SEA's view that the SunCom Petition should be denied.

7/ The other two companies with 220 MHz products are Uniden (Japan) and Securicor (U.K.).

II. THE 220 MHz SERVICE IS NOT "SUBSTANTIALLY SIMILAR" TO OTHER CMRS SERVICES

5. The definitional framework of the Budget Act classifies as CMRS all mobile radio services that (1) provide interconnected telephone service (2) to the public (3) for a profit. But the Act does not require that all CMRS services be regulated comparably -- only those that are "substantially similar." Thus, the Commission has the discretion under the statute to apply a different regulatory treatment to certain CMRS services when warranted. SEA respectfully urges the Commission not to regulate 220 MHz CMRS providers (whose number is likely to be extremely small) in the same manner that it regulates large common carrier providers such cellular telephone companies and wide-area Specialized Mobile Radio ("ESMR") operators.

6. The Commission must not lose sight of the reason why the 220 MHz service was created in the first place -- to provide a test bed for the deployment of narrowband (5kHz) equipment in the marketplace so as to, in turn, encourage the meaningful development of narrowband in other portions of the spectrum. The involvement by SEA in the FCC's history of narrowband development dates back to the early 1980s. SEA was an active participant in the Commission's proceeding, culminating in 1985, to allow use of narrowband technologies for private land mobile use on a permanent basis in the 150-174 MHz band.[8/] Obtaining widespread usage of narrowband equipment in the 150-174 MHz band

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8/ Narrowband Technologies for Base and Mobile Communications in the Private Mobile Services, 57 P. & F. Rad. Reg. 2d 1439 (1985).

was difficult, due to existing heavy use by licensees using conventional equipment (e.g., 25 or 30 kHz channel widths) and the technical limitations of the rules. Accordingly, in response to petitions by the private land mobile user community and the narrowband equipment manufacturing industry, the Commission issued a Notice of Proposed Rulemaking looking toward the allocation of frequency exclusively for use with narrowband equipment.[9/] On September 6, 1988, the Commission released a Report and Order in General Docket No. 87-14 (Allocation Order), reallocating the 220-222 MHz frequency band from shared use with other radio services to use exclusively for private and federal government land mobile use.[10/]

7. In 1991, the Commission released a Report and Order adopting a channel allocation plan and service rules for the 220 MHz service.[11/] The Commission adopted a comprehensive framework of channel allocation for local and nationwide channels for commercial and non-commercial use. The 220 MHz band, consisting of only 2 MHz in total spectrum from 220-222 MHz, includes 4 five-channel blocks of paired narrowband (5 kHz) channels for nationwide commercial use, 20 five-channel trunked

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9/ Notice of Proposed Rulemaking in GEN. Docket No. 87-14, released February 12, 1987, 2 FCC Rcd. 796 (1987).

10/ Report and Order GEN. Docket No. 87-14, 3 FCC Rcd. 5287 (1988), recon. denied, 4 FCC Rcd. 6407 (1989), affirmed, American Radio Relay League, Inc. v. FCC, No. 89-1602 (D.C. Cir. December 3, 1990).

11/ Report and Order in PR Doc. No. 89-552, 6 FCC Rcd. 2356 (1981), recon. granted in part and denied in part, 7 FCC Rcd. 4484 (1992); appeal dismissed, Evans v. FCC, (D.C. Cir., March 18, 1994).

blocks available for either commercial or non-commercial use on a local basis, and special purpose local narrowband channels available either individually or in groups.

8. At Paragraph 17 of the Further Notice, the Commission sought comments specifically on whether commercial interconnected 220-222 MHz services that are reclassified as CMRS should be deemed to be "substantially similar" to any common carrier mobile services. They should not. As the Commission itself acknowledged, licensing of the 220 MHz band only commenced in 1993, and most systems have not yet been constructed. It is difficult to predict with any certainty whether commercial 220 MHz licensees will, in fact, provide service that is "substantially similar" to any Part 22 service. In any event, in view of the very limited amount of spectrum available to 220 MHz licensees, it appears unlikely that 220 MHz licensees will ever be able to offer services similar to those provided by cellular, 800 MHz ESMR, or the new PCS services.

9. The principal use for 220 MHz service is dispatch. Because of the narrow separation between paired channels at 220 MHz (only 1 MHz separation), it is difficult and expensive, given the current state of technology, to accomplish full-duplex operation. Accordingly, for the foreseeable future the 220 MHz service will be a half-duplex, i.e., push-to-talk, service. Users of dispatch service are accustomed to a push-to-talk operating environment, whereas cellular telephone users are not, and it is highly unlikely that cellular customers will view half-duplex 220 MHz service as "substantially similar" to the full-

duplex interconnected telephone service to which they are accustomed.

10. That the most likely use of the 220 MHz service will be for dispatch communications is borne out by the Commission's experience with 800 and 900 MHz SMR. The FCC's SMR licensee database indicates that only about half of existing SMR station licenses are used for providing interconnected service[12/]; and the recent study by Merrill Lynch indicates that an even smaller percentage of SMR units are used for telephone interconnection.[13/] Because the CMRS classification only applies, by statutory definition, to those mobile services that offer interconnect, the total population of 220 MHz systems that are susceptible of CMRS classification is likely to be extremely small.

11. The Commission should find that there is no "substantial similarity" between the interconnected service which might be provided by a small number of 220 MHz operators and the cellular-type mobile telephone interconnect service provided by cellular and ESMR licensees. Commercial 220 MHz licensees offering interconnect capability will most likely do so only to enhance the convenience of the primary dispatch service for their customers, rather than offering it in competition with the full-duplex telephone interconnect services offered by the cellular and ESMR carriers.

12/ Further Notice at note 25.

13/ Id. at note 51.

12. Because the Commission should not consider 220 MHz CMRS licensees (i.e., those limited number of licensees who may choose to provide commercial interconnect service) as "substantially similar" to entities regulated under Part 22, the Commission is not required, pursuant to the statute, to subject such systems to "comparable" technical requirements.[14/] It would not be in the public interest to extend Commission's proposal to impose comparable rules for comparable services to those 220 MHz licensees that might be classified in the CMRS category. The fledgling 220 MHz industry is brand new and very small. Compared with cellular, ESMR and PCS, it possesses but a tiny sliver of spectrum. The service was designed and created to provide an opportunity for narrowband (5 kHz) technologies to develop in the PLMRS marketplace. If the Commission is to allow this to happen, it must not burden 220 MHz licensees with technical requirements that may be appropriate for large common carrier CMRS providers (e.g., rules for channel assignment and service area; co-channel interference protection; comparable emission masks; comparable antenna height and power limits; modulation and emission requirements; and interoperability requirements)[15/], but which simply do not fit the circumstances of the 220 MHz service.

13. For the same reason, the proposed comparable "operational" rules regarding construction periods and coverage requirements, loading requirements, user eligibility, permissible uses, station identification, general licensee obligations and

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14/ Budget Act at Section 6002(d)(3).

15/ Further Notice at paragraphs 26-57.

equal employment opportunities,[16] should not be applied to the 220 MHz service, either.

14. In conclusion, the Commission should acknowledge that the 220 MHz service will be primarily a dispatch-only service and that even those 220 MHz licensees who offer interconnect service (and who might be, therefore, classified as CMRS providers) will not be offering a service that is "substantially similar" to that of the large cellular and ESMR operators, and that, accordingly, they should not be burdened with "comparable" technical and operational regulatory requirements.

III. THE SUNCOM PETITION SHOULD BE DENIED

15. At Paragraph 38 of the Further Notice, the Commission requested comment on the SunCom Petition, which sought permission to aggregate non-nationwide 220 MHz 5-channel blocks on a "regional basis" so that SunCom might provide multiple-market service on a single system.[17] The SunCom Petition was accompanied by a Request for Waiver of Section 90.725(f) of the Commission's Rules which provides for an eight-month construction period. The combined effect of the SunCom Petition and Waiver Request will be to create a single licensed network of 220 MHz stations with approximate capacity of 50 channels per market and which, according to SunCom, will operate in "77 or more of the top 100 urban areas."[18] The construction of this super-

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16/ Further Notice at paragraphs 59-86.

17/ Id. at paragraph 38.

18/ SunCom Waiver Request at 13.

nationwide system could not be completed for 8 years, by SunCom's own admission.[19/]

16. SunCom asserts that the relief it has requested is necessary to enable the 220 MHz service to compete with cellular, ESMR and PCS. What SunCom is seeking is to bootstrap the 220 MHz service into something it is not. The service was designed, as described above, to permit meaningful development of narrowband technology in unoccupied spectrum in order to promote spectrum efficiency and to reduce projected spectrum requirements for land mobile uses elsewhere in the PLMRS frequency bands.[20/] The Commission recognized correctly that 220 MHz systems would provide a niche service, at least initially, and that the primary market for the service at the outset would be among local dispatch customers. The 220 MHz service is not cellular; it is not ESMR; is not PCS; and SunCom's attempt to transform it into a head-to-head competitor of those services, even before the 220 MHz service is born, is misguided. The Commission previously adopted a comprehensive framework of channel allocations for local and nationwide channels in commercial and non-commercial use after much comment and deliberation. [21/] That framework should be given an opportunity to prove itself in the marketplace

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19/ Id.

20/ Report and Order, 6 FCC Rcd. at 2357-58; see also Notice of Proposed Rulemaking in PR Docket No. 92-235, Replacement of Part 90 with Part 88, "Spectrum Refarming," 7 FCC Rcd 8105 (1992).

21/ Report and Order in PR Doc. No. 89-552, 6 FCC Rcd. 2356 (1981), recon granted in part and denied in part, 7 FCC Rcd. 4484 (1992); appeal dismissed, Evans v. FCC, (D.C. Cir., March 18, 1994).

before adoption of the kinds of fundamental changes sought by SunCom.

17. The SunCom Petition is simply an attempt to circumvent the Commission's decision to license only four five-channel trunked nationwide commercial systems. If SunCom were genuinely interested in providing nationwide 220 MHz service, it could have applied for one of the four licenses and taken its chances in the lottery with the 128 other applicants. Or it could have sought timely reconsideration of the Commission's earlier decision to establish only four nationwide commercial licenses. The Commission should not countenance this untimely attempt to re-write the rules before the 220 MHz service has had a chance to commence operations in any meaningful sense.

18. Although SunCom's request is really for a nationwide license, it has couched its request in terms of "regional" licensing. Again, if SunCom were genuinely interested in providing service that is "regional" in character, it can and should follow the Commission's existing rules for the 220 MHz service, which specifically contemplate the evolutionary development of regional systems after they've been constructed. When the Commission adopted the 220 MHz channel plan, it declined to set aside spectrum for regional channels for the reason that no commenting parties had clearly defined any parameters for regional channels or systems. Indeed, SunCom has not done so, either.

19. Instead of setting aside spectrum for 220 MHz regional channels, the Commission concluded that applicants would be able

to achieve the equivalent of a regional or wide-area system, if the actual experience of the marketplace justified such systems, by acquiring single channels or trunked channels in contiguous geographic areas in whatever combinations would be most suitable.[22/] The Commission also stated that the diversity in demand for narrowband communications in the 220 MHz service could be met by the evolutionary consolidation of channel groups. The Commission even said that additional nationwide systems, other than the four that were set aside for licensing at the outset, could evolve and grow out of local and regional systems.[23/] At the present early stage in the development of the 220 MHz service it is premature to revisit the fundamental channel allotment and licensing framework that has been adopted by the Commission. The evolutionary approach adopted by the Commission in 1991 and presently incorporated in the rules should be given a chance.

20. SunCom's back door attempt to acquire a nationwide license appears to be motivated by a desire to evade the financial qualification criteria of the rules governing 220 MHz nationwide licenses. Section 90.713(a)(5) of the rules requires applicants for commercial nationwide channels to include, as part of their applications, proof that they have sufficient financial resources to construct 40% of the system and operate it for the first four years of the license term. Such resources must be in the form of net current assets sufficient to cover the estimated costs, or a firm financial commitment demonstrating the

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22/ Report and Order, 6 FCC Rcd 2356, 2362 (1991).

23/ Id.

availability of funds committed to the project. SunCom has estimated its "project costs" at approximately $35 to $50 million, and has stated that the "primary source of capital planned for the network will be the principals of the company."[24/] But these principals are not named, and there is no indication in the form of balance sheets or other financial information submitted with the SunCom Petition to demonstrate SunCom's financial ability to construct the 220 MHz network that would be encompassed by its proposed nationwide license.

21. The Commission went to considerable lengths to discourage speculators in the 220 MHz service. Granting the relief requested by SunCom would achieve the opposite result. SunCom claims that it has surveyed "most of the 220 MHz licensees" and has learned that "only a small percent of them will independently construct their one or several licenses." What this reveals is that, notwithstanding the Commission's efforts to deter speculators in the lottery for 220 MHz licenses, numerous such speculators did, in fact, apply and may have been awarded licenses. Indeed, the Commission's explicit rationale for giving short notice for filing of applications[25/] and adopting the eight month construction deadline was to deter speculators. As to the construction deadline, the Commission stated that the eight month period for local systems "should help to assure that only bona fide applicants applied," and that such

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24/ Attachment to SunCom Request for Rule Waiver, at page 1.

25/ The Commission announced that it would accept applications on a first-come, first-served basis two days after publication in the Federal Register.

applicants "must be prepared to immediately construct their stations with readily available equipment."[26/]

22. SunCom's Petition seeks relief from the eight-month requirement of Section 90.725(f), but is procedurally defective in that it does not specify which particular licenses are to be covered by the waiver request. In the absence of any specifically designated licenses, SunCom's request for a construction "milestone" approach must be presumed to apply to all outstanding 220 MHz licenses, including those whom SunCom has identified as speculators.[27/] If the Commission grants such a request, the result will be nothing less than further delay in the deployment of 220 MHz narrowband equipment. Given that the fundamental purpose of reallocating the 220 MHz spectrum and creating this service in the first place was "to facilitate the rapid and varied development of narrowband technologies,"[28/] the Commission would be contradicting its own stated goal if it were to grant SunCom's request.

23. When the Commission adopted its channel plan for the 220 MHz service, it chose a balanced mix of local and nationwide licenses to be used for both commercial and non-commercial

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26/ Report and Order, 6 FCC Rcd. at 2366.

27/ SunCom's has requested construction deadlines as follows: 2 years for 15% of markets; 4 years for 45% of markets; 6 years for 75% of markets; and 8 years for 100%. This is more liberal with respect to the percentage of markets covered for the first 3 milestones than the Commission's present rules for legitimate nationwide 220 MHz licenses, i.e., 10%, 40% and 70% for the 2, 4 and 6 year milestones, respectively. See Section 90.725 of the Commission's rules.

28/ Report and Order at 2359.

purposes, together with opportunity for public safety use, single channel as well as trunked channel service, and opportunity for voice and data applications or a combination of the two. The delays in conducting the 220 MHz lottery, issuing the licenses, and disposing of the Evans v. FCC court appeal have contributed collectively to postponing the opportunity to ascertain the viability of the framework adopted by the Commission. The first 220 MHz systems ever to commence operations did not go on the air until less than a year ago. With the recent dismissal of the court appeal and consequent removal of the cloud of uncertainty which the appeal had cast over the entire industry, many licensees are only now placing orders, taking delivery of equipment and putting systems on the air. The Commission owes it to existing licensees (who are adhering to the present rules) and the manufacturing industry to allow a reasonable period of time to pass with the existing rules in place before it engages in a wholesale reconfiguration of the 220 MHz industry as requested by SunCom.

24. And let there be no question: it is a wholesale reconfiguration of the rules that SunCom seeks. Although couched as a request for waiver of the eight-month construction deadline and a declaratory ruling that would allow it to hold multiple licenses, SunCom's Petition is, as SEA has demonstrated herein, a request for a total change in the 220 MHz channel allocation framework and licensing rules. SEA has no objection to changing these rules if change is shown to be justified; but SEA respectfully submits that there has not yet been a sufficient

opportunity to evaluate the 220 MHz service under the existing rules. If, after a reasonable period of operation under the current rules, the Commission decides that the present approach (which allows for flexible evolution of the service) is inadequate for some reason, then the Commission can set out to create a new nationwide or regional licensing framework. At such time, the Commission should amend its rules following notice and comment, reconfigure the 220 MHz channel plan, and allow all persons to apply for the newly created licenses, to be awarded either by lottery or auction. But it would be contrary to the public interest, and squarely against the Commission's stated purpose of encouraging the rapid deployment of narrowband service, to change the rules now through the ad hoc method suggested by SunCom.

25. Nor does SEA have any objection to a brief extension of the present eight-month construction deadline, as long as such an extension is rationally related to relevant facts and circumstances giving rise to the need for additional time to construct systems. The only rationale offered by SunCom for its proposed eight-year extension is that it wants to create another nationwide license and give the speculators additional time to figure out what to do with their licenses.

26. SunCom's claimed need for a nationwide network is based on a faulty premise. SunCom asserts that potential users of the primary service offered by 220 MHz licensees, i.e., basic dispatch, will have operations "spread over many markets, regions

or the entire nation."[29/] This is simply not true -- the typical user of dispatch service operates a fleet of vehicles in a local area. Regional or nationwide fleets are the exception, not the rule, and the Commission's channel allocation in the 220 MHz service (i.e., majority of channels for local use, with a minority for nationwide use) reflects this reality.

27. SunCom's Petition is also faulty in its perception regarding the comparability between the 220 MHz service and other mobile services using various forms of wideband digital technology, such as cellular with TDMA and CDMA, ESMR with MIRS and 900 MHz SMR with FDMA.[30/] SunCom's argument is that, because a 5 kHz channel "cannot provide nearly the capacity of these wider [cellular and SMR] channels," the Commission is justified in granting SunCom's request to widen the channel capacity of 220 MHz systems (by combining "10 or more 5-channel licenses per market").[31/] Again, SunCom seeks to bootstrap the 220 MHz service into something it is not. The service was designed, as stated above, to allow the development of narrowband technology in unoccupied spectrum so as to promote spectrum efficiency and reduce projected spectrum requirements for private land mobile uses.[32/] The Commission recognized correctly that 220 MHz systems would provide a niche service, at least initially, and that the primary market for the service at the

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29/ SunCom Declaratory Ruling Letter at 6.

30/ SunCom Petition at n. 4.

31/ Id. at pages 3-4.

32/ Report and Order, 6 FCC Rcd. at 2357-58.

outset would be among local dispatch customers who may acquire the service commercially from others or provide the service to themselves in the classic PLMRS fashion. Again, the 220 MHz service is not cellular; it is not ESMR; it is not PCS; and SunCom's attempt to transform it into a head-to-head competitor of those services is misguided and ill-conceived.

28. Another reason for rejecting SunCom's Petition pertains to the timing of SunCom's request for a ruling that SunCom's planned holding of multiple 220 MHz licenses in a given geographic area will be allowed. That request is premature. Section 90.739, by its terms, already contemplates the holding of multiple licenses by a single entity upon a showing, after construction, which demonstrates that additional licenses are justified on the basis of the communication requirements of the system. The Commission stated that such a showing might include, but need not be limited to, factors such as loading on assigned channels, explanation of geographic coverage required, and documentation of the additional numbers of mobiles need.[33/] Importantly, the Commission stated that an applicant who "seeks to justify a need for additional channels prior to construction of a first system in a geographic area will face a heavy burden of proof."[34/] SunCom has not met this burden. It should be required to follow the existing rules -- just like all other 220 MHz licensees who are now building systems and who contemplate

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33/ Report and Order at n. 126.

34/ Id. at 2364, emphasis added.

possible consolidation -- and come to the Commission with a demonstration of need after its systems have been built.

29. Indeed, there are many other entities, including SEA, that are currently in the process of constructing stations and putting them on the air. Based upon loading and operating conditions once these systems are in operation, it is likely that entities will come forward, consistent with the present rules, and make demonstrations justifying the holding of multiple licenses in certain geographic areas. The Commission specifically anticipated that this might occur, which is why it declined to set aside spectrum for regional licenses at the outset, preferring instead to permit the evolution of de facto regional systems (or, eventually, additional de facto nationwide systems) by providing in the rules that licensees may acquire, after they are constructed, additional channels in contiguous geographic areas. SunCom has not demonstrated that its request for a priori designation of all local trunked systems as "nationwide" is either necessary or in the public interest. To the contrary, the SunCom Petition, if granted, would disserve the public interest by stopping the recently-gained momentum in the 220 MHz service and further delaying the opportunity for early deployment of narrowband technology in the mobile radio market.

IV. CONCLUSION

30. For all the foregoing reasons, the Commission should (1) find that those 220 MHz systems that are deemed to be CMRS (i.e., only those that provide for-profit interconnected service